
UTAH LABOR COMMISSION

**ZACHARY THOMAS NAU, formerly
known as Zachary Thomas Hebert, by
and through, KRISTIN NAU, his mother,
in the matter of :**

FREDERICK LEE HEBERT,

Decedent,

vs.

**WIN TRUCKING INC and WORKERS
COMPENSATION FUND,**

Respondents.

**ORDER SETTING
ASIDE ALJ'S DECISION**

ORDER OF REMAND

Case No. 06-5202

Kristin Nau, on behalf of her son Zachary Nau, a minor child formerly known as Zachary Hebert, asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's order terminating Zachary's right to receive dependent's benefits under the Utah Workers' Compensation Act.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Frederick Hebert died in a work accident on September 5, 2002, while employed by Win Trucking. On November 14, 2002, Win Trucking and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Win Trucking" hereafter), submitted a claim for workers' compensation dependents' benefits to the Labor Commission's Adjudication Division on behalf of Mr. Hebert's dependents. On November 26, 2002, and December 13, 2002, Administrative Law Judges Eblen and La Jeunesse issued their respective orders in this matter. These orders established, among other things, that Mr. Hebert was survived by three minor dependent children, including Zachary. The orders required Win Trucking to pay dependents' benefits to the three children until each child reached 18 years of age.¹ Zachary, whose birth date is October 4, 1994, was therefore entitled to continue receiving dependent's benefits until October 4, 2012.

Over the next several years, Win Trucking complied with the foregoing orders by paying

¹ Judge La Jeunesse issued an "amended" order to correct a computational error in Judge Eblen's earlier order. Judge La Jeunesse's amended order did not modify Judge Eblen's original determination that Zachary was entitled to benefits as one of Mr. Hebert's three minor dependent children.

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dependents' benefits to Mr. Hebert's three children. Then, on approximately October 23, 2006, Kristen Nau contacted the Adjudication Division to arrange for Zachary's benefits to be paid under his adoptive last name of "Nau," rather than his birth name of "Hebert." In support of this request, Mrs. Nau provided a Decree of Adoption showing that David Nau had adopted Zachary in October 1999, thereby terminating Mr. Hebert's parental responsibilities for Zachary. This adoption occurred some three years prior to Mr. Hebert's work accident and death.

On receipt of the foregoing information, Judge La Jeunesse issued a supplemental ruling that, because Zachary had been adopted by Mr. Nau, Zachary was not entitled to dependents' benefits for the subsequent death of his natural father, Mr. Hebert. Mrs. Nau, on Zachary's behalf, then filed a timely request for Commission review of this matter. In summary, Ms. Nau contends that the facts surrounding Zachary's adoption by were known by all the parties at the time of Mr. Hebert's death, and that the parties have been in continuous agreement that Zachary should receive dependent's benefits.

DISCUSSION AND CONCLUSION OF LAW

The rights of Mr. Hebert's children to receive workers' compensation dependents' benefits under the Utah Workers' Compensation Act, and the obligation of Win Trucking to pay those benefits, were settled by the orders issued by Judge Eblen and Judge La Jeunesse in November and December 2002. Those orders, which found Zachary entitled to dependents' benefits until he turned 18 years of age, were not challenged by the parties. Consequently, pursuant to § 34A-2-801 (2) of the Act, those orders—and Zachary's right to dependents' benefits—became the final order of the commission.

With Zachary's right to benefits established by the final orders entered in 2002, the question arises whether Judge La Jeunesse had the authority in November 2006 to re-adjudicate Zachary's right to those benefits. On this point, the Commission notes that none of the interested parties requested re-adjudication, nor were they given notice that Judge La Jeunesse intended to reopen the matter. The Commission also notes that the parties' circumstances had not materially changed since the original orders were entered in November and December 2002. Under these circumstances, the Commission concludes that Judge La Jeunesse did not have jurisdiction to re-adjudicate Zachary's entitlement to benefits. For that reason, the Commission sets aside Judge La Jeunesse's supplemental order of November 22, 2006.

It appears that supplemental order of November 22, 2006, which is set aside by this decision, may have disturbed the timing and amount of payments to Mr. Hebert's three dependent children as those payments were established by the 2002 orders. The Commission therefore remands this matter to Judge La Jeunesse to take such action as is necessary to reinstate the payments outlined by the 2002 orders.

ORDER

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The Commission sets aside Judge La Jeunesse's supplemental order of November 22, 2006, reinstates Judge Eblen and Judge La Jeunesse's orders of November and December 2002, and remands this matter to Judge La Jeunesse for further action consistent with this decision. It is so ordered.

Dated this 24th day of February, 2009.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.